

TO: State Directors and Area Offices
Rural Development

ATTENTION: Multi-Family Program Managers

FROM: James C. Alsop
Acting Administrator
Rural Housing Service

SUBJECT: On-Farm Labor Housing Selected Servicing and Support Materials

PURPOSE/INTENDED OUTCOME:

The purpose of this Administrative Notice (AN) is to issue guidance on selected servicing and support materials required to comply with the recent court order in Roman vs. Korson. The intended outcome is to provide information needed to meet the court order and to demonstrate whether or not the provisions of the court order are being met.

COMPARISON WITH PREVIOUS AN:

This AN combines the guidance earlier issued in AN 3561(1930-C), which expired June 26, 2000, and AN 3570(1930-C), which expired March 31, 2001.

IMPLEMENTATION RESPONSIBILITIES:

I. Reporting information.

The reporting information contained in this AN as Attachment A is needed to carry out a court order. The court order is provided as Attachment B. The last element of the court order requires supporting materials for each borrower be provided to supplement the quarterly reporting material required to be reported by Attachment E of AN 3630 (1930-C).

Effective immediately, the attached report will continue to be completed as it was last year on a quarterly basis. The first report must be prepared to reflect information as of September 30, 2001. Negative reports are required. The reporting information is due for receipt in the National Office within 30 days of the ending report date (e.g., for the September 30, 2001, report information must be submitted prior to October 31, 2001). In addition, support materials

EXPIRATION DATE: September 30, 2002

FILING INSTRUCTIONS:
Preceding RD
Instruction 1930-C

evidencing the status of the reported information should accompany the report. This includes, but is not limited to, copies of the servicing letters referenced, and copies of the approved crediting or rebate plans and evidence of compliance with such plans. Evidence of any prepayment should also be forwarded.

Reporting information should be sent to the attention of Melba L. Swarey in the National Office. The material may be sent via mail for receipt by the due date or by fax or e-mail. The fax number is 202-720-0302. The material may be sent via e-mail to the following: mswarey@rdmail.rural.usda.gov. The information reported will be provided to the Department of Justice, the plaintiffs, and the court.

It is critical that the Agency fulfill its servicing responsibilities. The court has ruled that the Agency is not carrying out its servicing responsibilities. This record is not acceptable and must be corrected.

In short, the court ruled that the Agency is not forwarding the written servicing letters as required. In addition, the court ruled that the Agency is not being successful in getting results from its letters demanding that the borrower credit or rebate unauthorized shelter cost changes retroactively to these tenants. Information supplied by field offices reflect a very low number of borrowers issuing credits or rebates to affected tenants, and a very low dollar amount of credits or rebates delivered to these tenants. When a borrower is unable or unwilling to comply with an Agency demand to credit or rebate unauthorized assistance to tenants retroactively, this information must be reported to the State Office along with a recommendation for servicing.

The Administrator of Rural Housing Service and the Under Secretary of Rural Development will be advised if any State Office fails to submit a timely report.

II Selected servicing actions.

The National Office staff will entertain requests under paragraph X of Exhibit C of RD Instruction 1930-C. The requests should be limited to those cases where the State Director determines that the normal servicing actions are deemed inappropriate. In addition, we have the authority to permit rebates or credits to the present tenants if efforts to locate tenants affected who have moved are unsuccessful. Sufficient documentation to evaluate recommended actions is needed.

In circumstances such as where an increase in taxes or utilities was imposed, which was beyond the ability of the borrower to control, but where the provisions of Exhibit C of RD Instruction 1930-C may not be fully met, it is appropriate to forward alternative servicing recommendations.

Such a recommendation must be accompanied by the following:

1. Identification of the dates that the potential shelter cost violations were discovered.
2. Evidence that the borrower was notified in writing of the potential shelter cost violation and of the duty to rebate or credit unauthorized shelter cost changes to affected tenants.
3. Documentation as to the results of a written notice to rebate and credit unauthorized assistance to affected tenants and subsequent servicing actions.

4. Estimates of the amount of the alleged shelter cost violations owed.
5. The names and addresses of the tenants affected or a statement describing why such tenants cannot be located and any steps taken to locate such tenants. Evidence of reasonable attempts to locate affected tenants is required (i.e., consulting local telephone directories, or returned mail from their last known address, dialing information for assistance in locating a tenant's telephone number from a local operator).
6. Indication as to whether the borrower meets all of the following provisions regarding the shelter cost servicing issues:
 - a. The Agency was provided reliable information from the borrower and there is no evidence that information provided was false, misleading, or misrepresented.
 - b. The Agency is provided information that discloses that financial harm would occur to the project or owner.
 - c. The nature of the issue is such that, if proper prior notification of the shelter cost increase was forwarded to the Agency, the Agency would have been required to approve the request. Such a finding requires meeting all of the following findings:
 - i. The increase is caused by factors beyond the control of the borrower such as an increase imposed by a real estate tax increase in utilities from a sole utility provider.
 - ii. The increase appears reasonable.
 - iii. The amount of funds collected from rent and utilities does not exceed the amount needed to pay for maintenance and repairs, taxes, insurance, and indebtedness owed on the project. In other words, the borrower was not deriving a profit from the on-farm labor housing operations.

Upon receipt of the information needed to support a request under paragraph X of Exhibit C of RD Instruction 1930-C, the National Office staff will review the recommendation to alter the servicing standards that normally apply. An appropriate written response will be provided on a case-by-case basis.

Questions concerning the provisions of this AN or concerning servicing advice may be directed to James E. Vollmer of our staff at 202-720-1060.

Attachments

**REPORT OF ON-FARM LH BORROWER COURT-ORDERED
SERVICING EFFORTS**

As of _____

State **Borrower Name** **Case Number**

<u>Date of First Servicing Letter</u>	<u>Date of Second Servicing Letter</u>	<u>Date of Third Servicing Letter</u>	<u>Date of Problem Case Report</u>	<u>Amt. of Improper Charges</u>	<u>Amt. of Rebates Paid</u>	<u>Amt. of Credits Owed</u>	<u>Amt. of Credits Paid</u>
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<u>Amount of RHIF Payment Requested</u>	<u>Amount of RHIF <u>Payment</u> Made</u>
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Are objectives of Court Order regarding rebates and credits being met? [☐] Yes [☐] No If no, explain giving plans for future action

Prepared by: _____
(Signature)

Date: _____

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ROGELIO ROMAN, et al.,)	
)	
Plaintiffs,)	File No. 1 91-CV -274
)	
v.)	Hon. Richard Alan Enslen
)	
GERALD KORSON, et al,)	ORDER AMENDING
)	JUDGMENT
Defendants.)	
_____)	

In accordance with the Opinion of this date, the Plaintiff's Renewed Motion for Post Judgment Relief (Dkt. No. 441) is GRANTED and the Judgment and Permanent Injunction of February 9, 1996 is AMENDED to include the following additional terms:

Federal Defendants, their successors, officers, and agents, are HEREBY ENJOINED to:

1. Reissue their Administrative Notice ('AN'), upon its expiration, for a period not less than three (3) consecutive years;
2. Comply with "Secondary request letters." (AN & 5C);
3. Comply with "Last notice to avoid more serious servicing options." (AN & 5D);
4. Comply with "Processing problem case reports." (AN & 5E.)
5. Provide quarterly compliance reports, under seal, to the court and Plaintiffs, with supporting documentation for each borrower, until the expiration of the reissued AN.

DATED in Kalamazoo, MI
March 21, 2000

/S/
Richard Alan Enslen
Chief Judge